

Art  
B10

81. (New) The method of claim 80, comprising: providing to said cut flower or plant cutting a solution comprising an effective amount of a compound of the formula:



where R is optionally branched or straight chain, saturated or unsaturated C<sub>8</sub>-C<sub>20</sub> alkyl, for a time necessary to extend the vase life of said cut flower or said plant cutting.

82. (New) The method of claim 81, wherein said compound is *N*-lauroylethanolamine (NAE12:0) or *N*-myristoylethanolamine (NAE14:0).

## 2. RESPONSE

### 2.1 STATUS OF THE CLAIMS

*Claims 1-58 were present in the Application as filed.*

*Claims 51-58 were cancelled without prejudice and without disclaimer, in response to the Restriction Requirement dated January 28, 2002 as being directed to the non-elected invention.*

*Claims 1-50 were pending at the time of the instant Action.*

*Claims 18 and 19 were cancelled herein without prejudice and without disclaimer.*

*Claims 1, 5, 13, 15, 23, and 25 were amended herein.*

*Claims 59-82 are added herein. For the convenience of the Examiner, a marked-up copy showing the claim amendments and additions is attached hereto as "Exhibit A."*

*Claims 1-17, 20-50, and 59-82 are now pending in the case. For the Examiner's convenience, a clean copy of all pending claims following entry of the present amendment is also attached hereto as "Exhibit B."*

Applicants note for the record that all pending claims were free from rejection under 35 U. S. C. §101, 35 U. S. C. §102, and 35 U. S. C. §112, 1<sup>st</sup> paragraph.

Applicants also note for the record that claim 1 reciting the limitation of claim 19 has been found to be free of prior art (the Action, page 3, 3<sup>rd</sup> paragraph), and that claims 10, 11, 13, 14, 16-22, and 26-50 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants seek clarification of Page 3 of the Action, 3<sup>rd</sup> paragraph, which indicates that claims 51-58 are allowable. Applicants believe that these claims have not yet been examined, as they are part of the non-elected invention, as defined by the prior Restriction Requirement now of record.

## **2.2 SUBSTITUTE SHEETS HAVE BEEN PROVIDED**

Applicants have submitted replacement sheets for pages 7, 8, 14, 16, and 17. Applicants submit the amendment solely for purposes of clarification of the commercial sources of the Trademark products identified in the original Specification, and to provide the requested chemical formulae for the referenced Good's buffers, and the Trademark product, Tween-20™. As such, Applicants believe no new matter has been introduced as a result of the substitution of these replacement sheets.

### 2.3 SUPPORT FOR THE CLAIMS

Support for each of the claims as amended herein, and the new claims added herein, is provided by the Specification, drawings, and original claims as filed. Applicants certify that no new matter has been introduced as a result of the accompanying amendment.

### 2.4 THE REJECTION OF CLAIMS 3-5, 7, 8, 15, 23, AND 25 UNDER 35 U. S. C. § 112, 2<sup>ND</sup> PARAGRAPH, HAS BEEN OVERCOME.

*Claims 3-5, 7, 8, 15, 23, and 25 were rejected under 35 U. S. C. 112, 2<sup>nd</sup> paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

*These claims are said to be indefinite for the recitation of trademark and trade names.*

Applicants correct in part and respectfully traverse in part, the alleged defects.

First, with respect to claim 15, although the claim terms objected to are not in fact, trademarks but widely-known chemical abbreviations for a family of biological buffers known as Good's buffers, in an effort to provide the greatest clarity possible, Applicants have nevertheless amended page 7 of the Specification, and claim 15 to more precisely identify the commercially-available buffers TRIS, HEPES, MOPS, BES, and BIS-TRIS by incorporating their chemical formulae into the Specification. Although not specifically objected to, claim 13 and page 8 of the Specification have also been amended to provide better clarity by including the chemical name of the Trademarked product, Tween-20<sup>TM</sup>.

Second, with respect to claim 25, the Trademark product names have been utilized by Applicants because they properly identify particular products that are well-known in the floral arts and are widely-available commercially. In fact, the Specification at pages 16 and 17 even provided the manufacturer's names for many of these well-known floral additives. Because the

products represent proprietary floral formulations, recitation of their exact chemical composition by Applicants is not possible.

M.P.E.P. § 608.01(v), 2<sup>nd</sup> paragraph, provides, however, that when the identity of a product is clear, the Examiner is authorized to permit the use of the trademark if it is identified in capital letters. The section provides, in pertinent part:

“....if the product to which the trademark refers is set forth in such language that its identity is clear, the examiners are authorized to permit the use of the trademark if it is distinguished from common descriptive nouns by capitalization. If the trademark has a fixed and definite meaning, it constitutes sufficient identification unless some physical or chemical characteristic of the article or material is involved in the invention. In that event, as also in those cases where the trademark has no fixed and definite meaning, identification by scientific or other explanatory language is necessary. *In re Gebauer-Fuelnegg*, 121 F.2d 505, 50 U.S.P.Q. 125 (C.C.P.A. 1941).

The matter of sufficiency of disclosure must be decided on an individual case-by-case basis. *In re Metcalfe*, 410 F.2d 1378, 161 U.S.P.Q. 789 (C.C.P.A. 1969).

Pursuant to M.P.E.P. § 608.01(v), 2<sup>nd</sup> paragraph, Applicants have therefore delineated the trademark products in the claims, and request that they be accepted as written.

Moreover, to fully comply with this section of the *Manual*, Applicants have fully capitalized and added the required “TM” identifiers to the trademark product names in claim 25, and have amended pages 8, 16, and 17 of the Specification to include the vendor names and addresses where the products may be obtained. As such, Applicants believe that claims 15 and 25 are sufficiently definite and the rejection should be withdrawn.

Finally, with respect to claims 3, 5, 7, 8, and 23, Applicants respectfully traverse and note that the claim terms objected to by the Office are not in fact, trademarks. The terms objected to by the Office are standard chemical nomenclature used to identify well-known members of the chemical family of *N*-acetyethanolamines. As the skilled artisan appreciates, *N*-acylethanolamines

(NAEs) are a class of lipid compounds with a fatty acid amide-linked to the nitrogen atom of ethanolamine. The numerical designations of NAEs define both the nature of the fatty acid (where the first number represents the number of carbon atoms in the *N*-acyl chain), and the number of double bonds present in the *N*-acyl chain (indicated by the second number in the formulae). For example, NAE12:0 refers to an *N*-acylethanolamine with a 12-carbon no-double-bond fatty acid that is amide-linked to ethanolamine. Likewise, NAE14:1, defines an *N*-acylethanolamine with a 14-carbon fatty acid having a single double bond, that is amide linked to ethanolamine.

These terms are readily discernable and understandable to a person skilled in the chemical arts, and particularly to one skilled in the biochemical arts involving *N*-acylethanolamines. This nomenclature is a shorthand description of the more formal, and lengthy chemical notations used to identify these compounds. While some of the NAE compounds have developed "common" names relating to their carbon chains (*e.g.*, NAE12:0 and NAE14:0 are sometimes referred to as *N*-lauroylethanolamine, and *N*-myristoylethanolamine, respectively), these trivial names do not provide any greater clarity of identification of the compounds than use of their systematic notations.

As evidence of the wide-spread use and acceptance of these terms to precisely identify particular members of the *N*-acylethanolamine family, Applicants provide in Exhibit C attached hereto, three scientific papers published by one of the inventors and his co-workers in peer-reviewed, scientific journals (Chapman *et al.*, *Plant Physiology*, 116:1163-1168, 1998; Chapman *et al.*, *Plant Physiology*, 120:1157-1164, 1999; and Chapman *et al.*, *Plant Physiology*, 121:1299-1308, 1999). Each of these papers uses the accepted NAE numerical designations extensively, and provides ample evidence that the terms have achieved widespread recognition and acceptance in the art.

Therefore, Applicants believe that the rejection of these claims is improper, and that it should be withdrawn. If however, some question still remains in the mind of the Examiner that a skilled artisan in this field would only be able to recognize the claimed products by the generic, or common names, Applicants will make such chemical names available to the Examiner in a response to a subsequent Action on the merits, and will submit replacement pages to make the clarifications of record in the Specification.

**2.5 THE REJECTION OF CLAIMS 1, 2, 6, 9, AND 12 UNDER 35 U. S. C. §103(A) HAS BEEN OVERCOME.**

*Claims 1, 2, 6, 9, and 12 have been rejected under 35 U. S. C. §103(a), as allegedly being unpatentable over Bergmann et al.*

Applicants respectfully traverse. Without acquiescing with the present rejection in any way, in the interest of cost-effectiveness, timeliness, and in an effort to maximize patent term., Applicants elect to prosecute to allowance composition claims commensurate in scope with that considered to be free of the art and patentable by the Examiner.

Applicants concur with the Examiner's observation on page 3 of the Action that the prior art does not suggest the composition of claim 1 having the plant hormone of claim 19. In the interest of efficiency, and mindful of patent term considerations and prosecution expenses, Applicants have amended claim 1 to include the limitation of claim 19, and have cancelled claims 18 and 19 in the accompanying amendment.

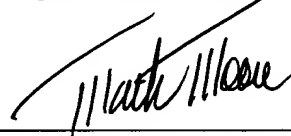
The prior art of record does also not suggest the compositions of new independent composition claims 64, 70, 71, or 72, each of which further comprise at least a first lecithin. Applicants concur with the Examiner that none of the prior art of record either teaches or suggests any of the methods encompassed by independent claims, 27, 73, 74, 77, and 80.

As such, Applicants therefore request that the rejection be withdrawn, and that all pending claims be proceeded to allowance with all due care and expediency.

## 2.6 SUMMARY

In conclusion, in light of the foregoing remarks, Applicants believe that the concerns set forth in the Action have now been overcome and that all pending claims are in condition for immediate allowance. Such favorable action is respectfully requested. Should the Examiner have any questions concerning the accompanying amendment, response and related papers, a telephone call to the undersigned Applicants' representative would be appreciated.

Respectfully submitted,



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